

REMARKS

Applicants' respectfully request reexamination and reconsideration of the application in view of the following remarks.

Claims 1- 7, 27, 36, and 45 have been canceled; claims 8, 16, 11, 23, 26, 30, 32, 35, 41, and 44 have been amended; and new claims 49-51 have been added.

The Examiner has rejected claims 23-40 under 35 U.S.C. §112 as failing to comply with the written requirement alleging humitant was not disclosed in the amounts claimed and lacks support in the original specification and that the claim language is indefinite.

Applicant respectfully requests that the Examiner withdraw the rejection in view of Applicant's amendment to the claim in view of the Examiner's comments and remarks regarding the portions of the specification supporting Applicants' claims.

Page 5, lines 17-21 of the specification state: "A humitant such as propylene glycol may also be optionally added to the composition to provide a means to control the foam structure through evaporation. A glycol such as propylene glycol might also be considered to be a release agent and function as a plasticizer as well."

The Examiner has rejected claims 1, 3 and 4 under 35 U.S.C. 102(b) as being anticipated by Swanup et al. (US 6,087,444).

Applicant traverses the rejection and respectfully requests that the Examiner withdraw the rejection in view of Applicant's amendment to the claims and the following remarks.

It is well settled law that a claim is anticipated only if each and every elements as set forth

in the claim is found, either expressly or inherently described, in a single prior art reference in as complete detail as is contained in the claim. Moreover, it is not sufficient that the prior art reference disclose all of the elements in isolation. Rather, “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Mashchinefabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481,485 (Fed. Cir. 1984) emphasis added). In traversal, the Applicant submits that Swarup et al. includes additional components and some different components such as an acrylic resin as compared to the amended claims of the instant application.

All of Applicants’ claims have been amended to claim only ingredients which are material to the composition.

Since all the elements of the independent claims cannot be found in Swarup et al., Swarup et al. cannot be said to anticipate these claims. For the above-discussed reasons, currently amended independent claims are not anticipated by Swarup et al. And withdrawal of the rejections based on same is respectfully requested. The claims depending on the amended independent claim are believed to be allowable and for this reason, among others, are also deemed allowable.

The Examiner has rejected claims 8-48 on the ground of nonstatutory obviousness-type-double patenting as being unpatenable over claims 1-49 of U.S. Patent 6,713,522 and claims 1-29 of U.S. Patent 6,822,012.

Applicants respectfully requests that the Examiner withdraw the rejection in view of Applicants’ terminal disclaimer enclosed herewith.

The Examiner has cited several other references of record as being pertinent to Applicant's disclosure, but not relied upon. Applicant has reviewed these references and has determined that none of these references is more pertinent than the references cited by the Examiner in the Office

Action. Therefore, further discussion of these references does not appear to be warranted.

Applicant submits that the claims are patentable over the cited references and that the application is in condition for allowance. Accordingly, Applicant respectfully requests prompt reconsideration and receipt of the formal Notice of Allowance.

Counsel has enclosed a check as payment for the petition and statutory disclaimer fees. Please charge any underpayment or credit any overpayment to Counsel's Deposit Account 50-0642.

If the Examiner believes there are other unresolved issues in this case, Applicant's attorney would appreciate a telephone call at (502) 452-1233 to discuss any such remaining issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Carrithers", written over a horizontal line.

David W. Carrithers
CARRITHERS LAW OFFICE, PLLC
One Paragon Centre
6060 Dutchman's Lane, Suite 140
Louisville, KY 40205
Telephone (502) 452-1233
Reg. No. 35,475